



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 31:030. Direct pay authorization.

5 RELATES TO: KRS 139.010, 139.260, [~~139.400~~], 139.710

6 STATUTORY AUTHORITY: KRS 131.130, 139.260, 139.660, 139.720

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS [~~13A.139~~], 131.130(1), 139.260, [~~139.400~~],

8 and 139.710 authorized the Department of Revenue[~~Revenue Cabinet~~] to promulgate administrative
9 regulations for the: (1) assessment, collection, refunding, administration, and enforcement of Kentucky tax
10 laws; and (2) direct pay authorization. This administrative regulation establishes the requirements and
11 procedures for the direct payment of Kentucky sales and use tax on purchases of tangible personal property
12 and digital property excluding energy and energy producing fuels.

13 Section 1. Definitions. (1) "Direct pay authorization" or "DPA" means an authorization issued by the
14 Department of Revenue[~~Revenue Cabinet~~] that permits a taxpayer to report Kentucky sales and use tax
15 directly to the cabinet on all purchases of tangible personal property and digital property, excluding energy
16 and energy-producing fuels.

17 (2) "Distribution facility" means a specific location which is used to receive, hold, and ship business
18 inventory.

19 (3) "Manufacturing" as defined by KRS 139.010(16). [~~means a process that transforms tangible personal~~
20 ~~property having no commercial value for its intended use before processing into tangible personal property~~
21 ~~having appreciable commercial value for its intended use after processing~~].

22 Section 2. Qualifications. An applicant shall:

(1) Be a person engaged in:

(a) Manufacturing;

(b) Extracting minerals, ores, clay, stone, coal, or natural gas;

(c) Operating a transportation company; or

(d) Operating a distribution facility; and

(2) Hold a valid Kentucky retail sales and use tax permit; and

(3) Have a record of timely payment of taxes administered by the cabinet;

(4) Maintain records in such a manner that, as applicable, the amount of tangible property and digital property purchased from:

(a) A Kentucky vendor may be properly reported; or

(b) An out-of-state vendor for storage, use, or other consumption in Kentucky or elsewhere can be verified; and

(5) Be engaged in business in Kentucky, and own property, other than office furniture and equipment, that is located in more than one (1) state; or

(6)(a) Have been engaged in business in Kentucky in excess of twenty-four (24) months; and

(b) Have purchased tangible personal property or digital property of at least ten (10) million dollars for use in his Kentucky operations in the preceding calendar or fiscal year, as applicable.

Section 3. Application. (1) An applicant shall apply to the department~~[cabinet]~~ for a DPA by submitting a fully completed~~[upon]~~ Revenue Form 51A112, "Application for Direct Pay Authorization".

(2) The application shall include:

~~[(a) The applicant's:~~

~~— 1. Legal business name;~~

~~— 2. Federal Employer Identification Number;~~

~~— 3. Date operations began in Kentucky;~~

~~— 4. Kentucky business address;~~

~~— 5. Mailing address;~~

~~6. Type of operation: manufacturing/processing; mining/quarrying; transportation company; or distribution facility;~~
~~7. Telephone and fax numbers;~~
~~8. Kentucky Employer's Withholding Account Number;~~
~~9. Kentucky Corporation Income and License Account Number; and~~
~~10. Kentucky Sales and Use Account Number;]~~

(a)[(b)] If an applicant is engaged in business and has property, other than office furniture and equipment, located in more than one (1) state, the location of the applicant's home office, and plants or places of business;

(b)[(c)] If the applicant is not engaged in business and does not have property, other than office furniture and equipment, located in more than one (1) state, the amount of tangible property and digital property purchased for use in the applicant's Kentucky business operations in the last calendar or fiscal year, as applicable;

(c)[(d)] Statements relating to records and documentation required by Sections 2(3) and (4) and 7 of this administrative regulation;

(d)[(e)] Most recent year's financial statement certified by the applicant's chief financial officer or a certified public accountant; and

(e)[(f)] A detailed description of the records maintained to document that the amount of taxable purchases is properly reported.

Section 4. Requirements. A DPA holder shall:

(1) Furnish all of his vendors, excluding vendors of energy and energy-producing fuels, with a copy of Revenue Form 51A110, "Direct Pay Authorization";

(2) Report and remit the sales or use tax on all taxable purchases of tangible personal property and digital property, excluding energy and energy-producing fuels, that would have been remitted by the applicant's retailer if the DPA had not been granted; and

(3) Report all taxable purchases in accordance with KRS 139.540, 139.550, ~~[139.560]~~ and 139.590.

Section 5. Vendor Responsibility. (1) A vendor shall be relieved of the duty of collecting and paying the sales or use tax if he:

- (a) Accepts a copy of a company's DPA[~~in good faith~~]; and
- (b) Retains the copy in his records pursuant to KRS 139.720(2).

(2) A vendor shall:

- (a) Include sales for which a DPA has been accepted in Line 1, Gross Receipts, of Revenue Form 51A102, "Sales and Use Tax Return"; and
- (b) Take a corresponding deduction on Line 19, which shall be labeled "DPA Sales".

Section 6. Limitations. A DPA holder shall not:

- (1) Issue the DPA to a construction contractor; or
- (2) Allow a contractor to use the holder's DPA to purchase, lease, or rent tangible personal property, digital property, or purchase taxable services.

Section 7. Records. A DPA holder shall maintain records pursuant to KRS 139.720(2) and 103 KAR 31:020.

Section 8. Bond Requirement. Upon demand of the department[~~eaabinet~~], the applicant or holder of a direct pay authorization shall execute pursuant to KRS 139.660, a bond or an indemnity agreement securing the payment of the sales or use taxes to the department[~~eaabinet~~] in an amount not less than \$75,000 and not greater than three (3) times the estimated monthly liability.

Section 9. Transfer of Authorization. (1) A DPA shall not be transferable upon the sale, lease, or other transfer of the business.

(2) A DPA holder shall notify the department[~~eaabinet~~] within ten (10) days of the effective date of the sale, lease, or other transfer of the business.

Section 10. Termination. (1) The department[~~eaabinet~~] shall terminate a DPA if the DPA holder:

- (a) Fails or ceases to be an eligible taxpayer;
- (b) Fails to timely file its sales and use tax returns and timely pay any tax due; or
- (c) Fails to comply with any of the provisions of this administrative regulation.

1 (2)(a) The department~~[cabinet]~~ shall notify a DPA holder of the termination by certified mail at his last
2 known address.

3 (b) Upon receipt of the notification of termination, a DPA holder shall notify all vendors within thirty
4 (30) days of the date of termination.

5 (3) The effective date of the termination shall be the date of the mailing of the termination notice.

6 Section 11. Protests. The denial or termination of a DPA may be protested pursuant to KRS 131.110.

7 Section 12. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable
8 copyright law, at:

9 (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

10 (2) At a Kentucky Taxpayer Service Center during business hours; or

11 (3) On the department website at <http://revenue.ky.gov>.

12 ~~[Incorporation by Reference. (1) The following material is incorporated by reference:~~

13 ~~—(a) "Application for Direct Pay Authorization, Form 51A112 (12-97)";~~

14 ~~—(b) "Direct Pay Authorization, Form 51A110 (8-97)"; and~~

15 ~~—(c) "Sales And Use Tax Return, Form 51A102 (9-92)".~~

16 ~~—(2) This material may be inspected, copied, or obtained at Kentucky Revenue Cabinet, 200 Fair Oaks,~~
17 ~~Frankfort, Kentucky 40620, or at a Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to~~
18 ~~4:30 p.m.]~~

103 KAR 31:030

APPROVED BY AGENCY:

Daniel Bork
DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

Oct 6, 2017
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 501 High Street, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3874 (fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 31:030

Contact Person: Lisa Swiger

Phone Number: (502) 782-5705

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 31:030 contains repealed statutory references, outdated and unnecessary forms dates, prior Department of Revenue address and contact information and an outdated reference to "good faith" in regards to Direct Pay Authorization requirements. Verbiage is updated to include "digital property" pursuant to KRS 139.200 and KRS 139.260. "Cabinet" is updated several times to "Department" to reflect the organizational structure of the Department of Revenue. Section 3 is streamlined to reference submitting a fully completed certificate and "manufacturing" in Section 3(1) is clarified to mean the definition contained in KRS 139.010(16). The proposed amendment updates regulatory language to address these issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language and information currently contained in the regulation. Repealed statutory references are removed and replaced with the updated statutory reference, outdated and unnecessary forms dates are removed, DOR contact and address information is updated, and "in good faith" is removed from Section 5(a) of the regulation. Verbiage is updated to include "digital property" pursuant to KRS 139.200 and KRS 139.260. "Cabinet" is updated several times to "Department" to reflect the Department of Revenue. Section 3 is streamlined to reference submitting a fully completed certificate and "manufacturing" in Section 3(1) is clarified to mean the definition contained in KRS 139.010(16).

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently

contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not) : Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 31:030

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: